

**Letter of Findings: 01-20210028
Individual Income Tax
For Tax Year 2019**

NOTICE: IC § 6-8.1-3-3.5 and IC § 4-22-7-7 require the publication of this document in the Indiana Register. This document provides the general public with information about the Indiana Department of Revenue's official position concerning a specific set of facts and issues. This document is effective as of its date of publication and remains in effect until the date it is superseded by the publication of another document in the Indiana Register. The "Holding" section of this document is provided for the convenience of the reader and is not part of the analysis contained in this Letter of Findings.

HOLDING

Individual moved from Indiana to Nevada during the tax year before beginning her military deployment. She demonstrated her intent to abandon Indiana domicile by continuing to live and work outside of Indiana without evidence of property ownership or licensure in the state. The protest is granted.

ISSUE

I. Individual Income Tax - Domicile.

Authority: IC § 6-1.1-12-37; IC § 6-3-2-1; IC § 6-3-1-12; IC § 6-8.1-5-1; *Lafayette Square Amoco, Inc. v. Indiana Dep't of State Revenue*, 867 N.E.2d 289 (Ind. Tax Ct. 2007); *Indiana Dep't of State Revenue v. Rent-A-Center East, Inc.*, 963 N.E.2d 463 (Ind. 2012); *Scopelite v. Indiana Dep't of Local Gov't Fin.*, 939 N.E.2d 1138 (Ind. Tax Ct. 2010); *Wendt LLP v. Indiana Dep't of State Revenue*, 977 N.E.2d 480 (Ind. Tax Ct. 2012); *Indiana Dep't of State Rev. v. Caterpillar, Inc.*, 15 N.E.3d 579 (Ind. 2014); *Croop v. Walton*, 157 N.E. 275 (Ind. 1927); *State Election Bd. v. Bayh*, 521 N.E.2d 1313 (Ind. 1988); [45 IAC 3.1-1-22](#); [45 IAC 3.1-1-22.5](#); [50 IAC 24-2-5](#).

Taxpayer protests the imposition of Indiana income tax.

STATEMENT OF FACTS

Taxpayer moved from Indiana to Nevada in January 2019. She maintained her place of residence in Nevada throughout 2019 while training for her military deployment. She states that her permanent address with her employer, however, was erroneously listed as an Indiana address through 2020.

The Indiana Department of Revenue ("Department") determined that Taxpayer had not filed an Indiana income tax return for 2019. The Department therefore issued a proposed assessment for 2019 Indiana income tax. Taxpayer timely protested the assessment and submitted an explanation and documentation to support her protest. A hearing was held and this Letter of Findings results. Additional facts will be provided as necessary.

I. Individual Income Tax - Domicile.

DISCUSSION

Based on information available to the Department, Taxpayer was assessed Indiana individual income tax for tax year 2019. Taxpayer protested the assessment, asserting that she and her mother left Indiana during the 2019 tax year, no longer had any place of residence in the state, and did not intend to return.

All tax assessments are prima facie evidence that the Department's claim for the tax is valid; the taxpayer bears the burden of proving that any assessment is incorrect. IC § 6-8.1-5-1(c); *Lafayette Square Amoco, Inc. v. Indiana Dep't of State Revenue*, 867 N.E.2d 289, 292 (Ind. Tax Ct. 2007); *Indiana Dep't of State Revenue v. Rent-A-Center East, Inc.*, 963 N.E.2d 463, 466 (Ind. 2012). Thus, the taxpayer is required to provide documentation explaining and supporting its challenge that the Department's assessment is wrong. Poorly developed and non-cogent arguments are subject to waiver. *Scopelite v. Indiana Dep't of Local Gov't Fin.*, 939 N.E.2d 1138, 1145 (Ind. Tax Ct. 2010); *see also Wendt LLP v. Indiana Dep't of State Revenue*, 977 N.E.2d 480, 485 n.9 (Ind. Tax Ct. 2012). When an agency is charged with enforcing a statute, the jurisprudence defers to the agency's reasonable interpretation of that statute "over an equally reasonable interpretation by another party." *Indiana Dep't of State Rev. v. Caterpillar, Inc.*, 15 N.E.3d 579, 583 (Ind. 2014).

Indiana imposes a tax on the adjusted gross income of every Indiana resident. IC § 6-3-2-1(a). Pursuant to IC § 6-3-1-12, a resident "includes (a) any individual who was domiciled in this state during the taxable year, or (b) any individual who maintains a permanent place of residence in this state and spends more than one hundred eighty-three (183) days of the taxable year within this state. . . ." In other words, a person owes tax on their adjusted gross income if, during the tax year, they either (1) were domiciled in Indiana, or (2) maintained a permanent place of residence and spent more than 183 days in Indiana.

Taxpayer lived and worked outside of Indiana starting in January and did not spend more than 183 days in Indiana in 2019. Thus, to be considered a resident of Indiana, Taxpayer must have been **domiciled** in Indiana.

[45 IAC 3.1-1-22](#) defines domicile as follows:

- a) "Domicile" means a person's domicile is the state or other place in which a person intends to reside permanently or indefinitely and to return to whenever he or she leaves the place. **A person has only one (1) domicile at a given time even though that person may be statutorily a resident of more than one (1) state. A person is domiciled in Indiana if he or she intends to reside in Indiana permanently or indefinitely and to return to Indiana whenever he or she leaves the state.**
- b) A person is domiciled in a state or other place until such time as he or she voluntarily takes affirmative action to become domiciled in another place. **Once a person is domiciled in Indiana, that status is retained until such time as he or she voluntarily takes positive action to become domiciled in another state or country and abandons the Indiana domicile by relinquishing the rights and privileges of residency in Indiana.**
- c) **In order to establish a new domicile, the person must be physically present at a place, and must have the simultaneous intent of establishing a permanent place of residence at that place. The intent to change one's domicile must be present and fixed and not dependent upon the happening of some future or contingent event. It is not necessary that the person intend to remain there until death; however, if the person, at the time of moving to the new location, has definite plans to leave that new location, then no new domicile has been established.**
- d) There is no one (1) set of standards that will accurately indicate the person's intent in every relocation. The determination must be made on the totality of facts, supported by objective evidence, in each individual case.

(Emphasis added). Thus, a new domicile is not necessarily created when an individual moves to a place outside Indiana. Instead, the individual must move to the new location and have an intent to remain there indefinitely.

[45 IAC 3.1-1-22.5](#) further outlines the factors in determining a person's domicile, as follows:

- (a) The department may require documentation from a person to evaluate domicile.
- (b) The one hundred eighty-three (183) day and permanent place of residence threshold in IC [§] 6-3-1-12(b) and [\[45 IAC 3.1-1-21\]](#) is not a test for domicile.
- (c) A person is presumed not to have abandoned their state of domicile and established a new state or other place of domicile in a given year if, during that year, the person maintained a permanent place of residence (whether as an owner, renter, or other occupier of the residence) in that state and the person did more than one (1) of the following:
 - (1) Claimed a homestead credit or exemption or a military tax exemption on a home in that state.
 - (2) Voted in that state.
 - (3) Occupied a permanent place of residence in that state or other place of domicile for more days of the taxable year than in any other single state.
 - (4) Claimed a benefit on the federal income tax return based upon that state being the principal place of residence.
 - (5) Had a place of employment or business in that state.

A person may rebut this presumption through the presentation of substantial contrary evidence.

- (d) If a person's domicile is not resolved by subsection (c), **the department may consider additional**

relevant factors to determine the person's state or other place of domicile, including the state or other place where the person:

- (1) maintained a driver's license or government issued identification card;**
- (2) was registered to vote;
- (3) registered a vehicle;**
- (4) claimed as dependents immediate family members who relied, in whole or in part, on the taxpayer for their support;
- (5) assigned or maintained a mailing address;**
- (6) maintained bank accounts;**
- (7) maintained active membership in a religious, social, cultural, or professional organization;
- (8) received professional services; and
- (9) kept valuables or family heirlooms.

This list of additional, relevant factors is not exclusive.

(Emphasis added).

Indiana law further defines "[h]omestead" as "an individual's principal place of residence . . . that is located in Indiana" and that "the individual owns" IC § 6-1.1-12-37(a)(2). "'Principal place of residence' means an individual's true, fixed, permanent home to which the individual has the intention of returning after an absence." [50 IAC 24-2-5](#). A taxpayer is entitled to claim a deduction, known as a homestead deduction (or exemption), against taxes imposed on his or her homestead property pursuant to IC § 6-1.1-12-37(e). When the taxpayer is no longer qualified for the homestead deduction (or exemption), the taxpayer must notify the auditor of the county where the homestead is located within sixty days after the date of that change. IC § 6-1.1-12-37(f).

In *Croop v. Walton*, 157 N.E. 275 (Ind. 1927), a taxpayer who was domiciled in Michigan sold his home in Michigan and moved to a new residence in Indiana where he and his wife lived for several years for the benefit of his wife's health. The taxpayer lived in the Indiana home "on account of the mental and physical condition of his wife, and continued to occupy it until such time as she could safely return to [Michigan] to live." *Id.* at 276. The court concluded that, based on the level of activity he maintained in Michigan and lack of intention to abandon his domicile, the taxpayer did not change his domicile from Michigan to Indiana. The court explained, in relevant part, that:

"If the taxpayer has **two residences in different states**, he is **taxable at the place which was originally his domicile, provided the opening of the other home has not involved an abandonment of the original domicile and the acquisition of a new one.**"

"[D]omicile" . . . is the place with which a person has a settled connection for legal purposes, either because his home is there or because it is assigned to him by the law, and is **usually defined as that place where a man has his true, fixed, permanent home, habitation, and principal establishment, without any present intention of removing therefrom, and to which place he has, whenever he is absent, the intention of returning.**

Id. at 277. (Internal citations omitted) **(Emphasis added).**

In explaining the difference between "residence" and "domicile," the court in *Croop* stated:

'Domicile' "is a residence acquired as a final abode. To constitute it there must be (1) residence, actual or inchoate; (2) the nonexistence of any intention to make a domicile elsewhere." "The domicile of any person is, in general, the place which is in fact his permanent home, but is in some cases the place which, whether it be in fact his home or not, is determined to be his home by a rule of law."

"Residence is preserved by the act, domicile by the intention." "Domicile is not determined by residence alone, but upon a consideration of all the circumstances of the case." . . . "While a person can have but one domicile at a time, he may have concurrently a residence in one place or jurisdiction and a domicile in another."

To effect a change of domicile, **there must be an abandonment of the first domicile** with an **intention not to return to it**, and there must be **a new domicile acquired by residence elsewhere** with an **intention of residing there permanently, or at least indefinitely.**

Id. at 277-78. (Internal citations omitted) (**Emphasis added**).

Subsequently, in *State Election Bd. v. Bayh*, 521 N.E.2d 1313 (Ind. 1988), the Indiana Supreme Court further considered the meaning of "domicile" in determining that Mr. Bayh met the residency requirement for the office of Governor. The court concluded that Mr. Bayh's domicile remained in Indiana even though he moved to different states for various reasons for many years. The court explained, in pertinent part:

Once acquired, domicile is presumed to continue because "every man has a residence somewhere, and ... he does not lose the one until he has gained one in another place." Establishing a new residence or domicile terminates the former domicile. A change of domicile requires an actual moving with an intent to go to a given place and remain there. "It must be an intention coupled with acts evidencing that intention to make the new domicile a home in fact....**There must be the intention to abandon the old domicile; the intention to acquire a new one; and residence in the new place in order to accomplish a change of domicile.**"

Residency requires a definite intention and "evidence of acts undertaken in furtherance of the requisite intent, which makes the intent manifest and believable." . . . **Intent and conduct must converge to establish a new domicile.**

Id. at 1317-18. (Internal citations omitted) (**Emphasis added**).

In this case, Taxpayer provided documentation supporting her position that she lived outside of Indiana beginning in January 2019. A mortgage statement shows that Taxpayer lived with her mother, who purchased a home outside of Indiana in January 2019. Student loan documents, bank statements, utility bills, insurance policies, and a Nevada driver's license all support the claim that Taxpayer did not reside in Indiana after 2019 and that she took steps to establish domicile in another state. Therefore, Taxpayer has met the burden imposed under IC § 6-8.1-5-1(c) of proving the proposed assessment wrong.

FINDING

Taxpayer's protest is granted.

July 27, 2021

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An [html](#) version of this document.